



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (202-857-6395) and FIRST CLASS MAIL

OCT - 5 2012

Brett Kappel, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Re: MUR 6438
Arthur B. Robinson
Art Robinson for Congress and Noah Robinson in
his official capacity as treasurer
Althouse Press
Access to Energy
Oregon Institute of Science and Medicine
Robinson Curriculum

Dear Mr. Kappel:

On December 13, 2010, the Federal Election Commission notified your clients, Arthur B. Robinson, Art Robinson for Congress and Noah Robinson in his official capacity as treasurer (the "Committee"), Althouse Press, Access to Energy, Oregon Institute of Science and Medicine, and Robinson Curriculum, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

On September 27, 2012, the Commission made the following findings, based on the information in the complaint and information provided by your clients:

- No reason to believe that the Committee knowingly accepted excessive contributions in violation of 2 U.S.C. § 441a(f);
- No reason to believe that the Committee knowingly accepted corporate contributions in violation of 2 U.S.C. § 441b;
- No reason to believe that Althouse Press, the Oregon Institute of Science and Medicine, or the Robinson Curriculum made corporate contributions in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f);

12044321890

- No reason to believe that the Committee failed to disclose earmarked contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c);
- No reason to believe that Althouse Press or Access to Energy failed to disclose earmarked contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Also on this date, the Commission dismissed the allegations that the Committee failed to disclose contributor employer and occupation information in violation of 2 U.S.C. § 434(b); dismissed the allegations that the Committee, Arthur B. Robinson, Althouse Press, and the Oregon Institute of Science and Medicine failed to include disclaimers in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11; and dismissed the allegations that the Committee accepted excessive contributions from four contributors in violation of 2 U.S.C. § 441a(f).

Based on the information before the Commission, it appears that the Committee may have violated 2 U.S.C. § 434(b)(3)(A) by failing to identify the occupation and employer of persons who made contributions that, when aggregated, exceeded \$200 for the election cycle, and that, regarding nine emails sent by the Committee to the Robinson Curriculum email list and the March 2010 Access to Energy newsletter, the Committee, Althouse Press, and the Oregon Institute may have violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by failing to include disclaimers in those communications. The Commission cautions Respondents to take steps to ensure that their conduct is in compliance with the Act and Commission regulations.

On September 27, 2012, the Commission closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Michael A. Columbu, the attorney assigned to this matter, at (202) 694-1341.

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

12044321891

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**
4
5

6 In the Matter of)
7) MUR 6438
8 Arthur B. Robinson)
9 Art Robinson for Congress and Noah Robinson, in his)
10 official capacity as treasurer)
11 Althouse Press)
12 Access to Energy)
13 Oregon Institute for Science and Medicine)
14 Robinson Curriculum)
15

16 **I. GENERATION OF MATTER**
17

18 This matter was generated based on a complaint filed with the Federal Election
19 Commission by Trent Lutz on behalf of the Democratic Party of Oregon. *See* 2 U.S.C.
20 § 437g(a)(1).
21

22 **II. INTRODUCTION**

23 Arthur B. Robinson was a candidate in Oregon's 4th Congressional District in the 2010
24 election. Robinson won the nominations of the Republican Party, the Independent Party of
25 Oregon, and the Constitution Party, and lost in the general election. Before and during his
26 candidacy, he published a home schooling program called "the Robinsen Curriculum" and a
27 periodical about energy issues called "Access to Energy." He conducted his businesses under
28 the names Althouse Press and the Oregon Institute for Science and Medicine (the "Oregon
Institute").

29 The Complaint in this matter alleges that: (1) Robinson's principal campaign committee,
30 Art Robinson for Congress (the "Committee"), received \$70,550 in excessive contributions;
31 (2) Robinson's businesses made, and the Committee received, corporate contributions, and the
32 Committee failed to properly disclose support from his businesses as in-kind contributions;

12044321892

(3) Robinson's businesses may have been conduits of earmarked contributions but neither his businesses nor the Committee filed conduit reports; (4) the Committee failed to disclose contributor information and did not make best efforts to do so; and (5) Robinson and his businesses violated the Act's disclaimer provisions. Respondents filed a joint Response that denied the allegations, or contended that the Commission should dismiss this matter.

For the reasons stated below, the Commission finds that there is no reason to believe, or dismisses, the allegations against Respondents, and closes the file.

III. FACTUAL AND LEGAL ANALYSIS

A. Alleged Receipt of Excessive Primary Contributions

This matter raises the issue of whether, under the Act and Commission regulations, the Committee was entitled to accept contributions under separate \$2,400 limits for the May 18, 2010, state-administered Republican Party primary election and the July 8-31, 2010, Independent Party of Oregon ("IPO") self-administered Internet primary election.¹ The Commission has not previously addressed squarely whether a candidate's committee may accept separate primary election contributions up to the limit for different parties' primaries when those primaries take place on different dates before the general election.²

The Complaint alleges that the Committee was not entitled to separate limits for the Republican and IPO primaries and, as a result of persons contributing to the Committee for both

¹ The Complaint did not allege, and the available information does not suggest, that the Committee accepted contributions toward an additional contribution limit in connection with Robinson's bid for the nomination of the Constitution party, which selected its nominee through a nominating convention held on June 27, 2010.

² Before the IPO completed its primary, the Committee was in communication with RAD about whether the Commission would treat the IPO primary as an election that would entitle the Committee to an additional contribution limit. The Commission did not make any determination regarding this issue, and RAD duly warned the Committee that the Commission had not decided the issue.

12044321893

1 primary elections, the Committee accepted a total of \$70,550 in excessive contributions.³ See
2 Compl. at 3; *id.*, Attach. I. The Complaint alleges that the Commission has not permitted
3 separate limits for multiple party primaries. Compl. at 3-4 (citing Advisory Op. 1994-29 (Levy)
4 ("AO 1994-29") and AO 1982-47 (Sullivan) ("AO 1982-47")). The Complaint also alleges that,
5 even if separate limits were permitted, the Committee accepted excessive contributions because
6 four contributors donated in excess of \$2,400 per election after the Independent Party's primary.
7 Compl. at 3-4; *id.*, n.3.

8 In response, the Committee asserts that it was entitled to a separate contribution limit for
9 the IPO primary pursuant to the Act and the Commission's regulations, which permit separate
10 contribution limits for each election and define elections to include primary elections. See Resp.
11 at 2-3, 6, 7-10. Respondents also note that the Commission has permitted candidates to receive
12 more than one contribution limit for their party's nomination process in addition to a general
13 election limit. See Resp. at 7-10 (citing Advisory Op. 2004-20 (Farrell for Congress) ("AO
14 2004-20") and Advisory Op. 1978-30 (Firmage for Congress) ("AO 1978-30")).⁴

³ This total includes contributions from nineteen different donors in excess of the applicable per-election contribution limit and twelve primary election contributions accepted after the GOP primary but before the IPO primary that exceeded \$2,400 and with no indication that those contributions were designated to retire the Committee's GOP primary debt. See Compl. at 3.

⁴ The Committee notes that it sought guidance from the Commission in June 2010 about this issue and that it interpreted the Commission's Reports Analysis Division ("RAD") response as authorizing it to receive contributions under a separate contribution limit for the IPO primary. See *id.* at 9. RAD communication logs do not support the Committee's interpretation of RAD's advice.

12044321894

1 1. Under the Plain Language of the Act and the Commission's Regulations,
2 the IPO Internet Primary Was a Primary Election

3 The Federal Election Campaign Act of 1971, as amended, (the "Act") provides that "no
4 person shall make contributions . . . to any candidate and his authorized political committees
5 with respect to *any election* for Federal office which, in the aggregate, exceed [\$2,400,]"
6 2 U.S.C. § 441a(a)(1)(A), and that no candidate or political committee shall knowingly accept an
7 excessive contribution. *See* 2 U.S.C. § 441a(f) (emphasis added). The Act's definition of
8 "election" includes: "(A) a general, special, primary, or runoff election; (B) a convention or
9 caucus of a political party[;]" and "(C) a primary election held for the selection of delegates . . .
10 of a political party[.]" 2 U.S.C. § 431(1)(A)-(C). The Commission's regulations define a
11 primary election as, among other things, "an election which is held prior to a general election, as
12 a direct result of which candidates are nominated, in accordance with applicable state law, for
13 election to Federal office in a subsequent election." 11 C.F.R. § 100.2(c)(1). The Commission
14 has also stated in Advisory Opinions that it determines whether a particular event is an election
15 based on analysis of relevant state law.⁵ *See, e.g.,* AO 2004-20; Advisory Op. 1992-25 (Owens
16 for Senate Comm.).

17 Oregon law permits minor political parties to nominate candidates for public office.
18 *See* Or. Rev. Stat. § 248.009. The relevant Oregon statute requires that: (1) a minor political
19 party file its organizational documents with the state; (2) the nominating process provide an
20 equal opportunity for all registered members of a party within the electoral district to participate
21 in the nomination process or selection of delegates who will make the nomination; and (3) the

⁵ The fact that the IPO conducted its primary over the Internet does not affect the analysis because, as noted above, the Act does not limit the definition of an election to state-administered ballot box elections; for example, it includes in the definition of "election" such events as political party conventions and caucuses so long as the convention or caucus has the authority to nominate the party's candidate. *See* 2 U.S.C. § 431(1)(B)-(D).

12044321895

party nominate candidates in accordance with the procedures in its organizational documents.

Id.

According to the IPO by-laws on file with the Oregon Secretary of State, the IPO Caucus has the authority to nominate candidates and it may choose to delegate that authority to “[a]ll members eligible to vote for the candidate through vote-by-mail or other means.” See IPO By Laws at Article V.D.2.4 (March 1, 2010), available at http://www.sos.state.or.us/elections/doc/cand/bylews_ind.pdf. Therefore, the IPO had the authority as a matter of Oregon state law to nominate candidates for election to federal office based on a vote of its members conducted over the Internet. And, as a consequence, the IPO Internet primary election satisfies the definition of an election under 2 U.S.C. § 431(1)(A) and 11 C.F.R. § 100.2(c).

2. The Committee Was Entitled to a Second Limit for the IPO Primary

Neither the Act nor the Commission regulations place a limit on the number of pre-general elections for which candidates may receive contributions. Nor does the Act specify that a primary election of a minor party does not qualify for a separate contribution limit. And finally, the Act and the Commission’s regulations do not indicate that a party’s nomination process that satisfies the definition of “election” may be deemed an election for some candidates (those who have not yet secured a major party nomination) and not for others (those who have already secured a major party nomination).

The Complainant contends that the Committee was not entitled to a separate contribution limit for the IPO primary because the Commission has stated in Advisory Opinions that candidates competing in more than one party’s primary that take place on the *same day*, so called

12044321896

1 “fusion elections,” are not entitled to separate contributions limits for each primary election.
2 Compl. at 3-4 (citing AO 1982-47, AO 1994-29).

3 In AO 1982-47, the Commission noted that the three party primaries at issue constituted a
4 single election because they occurred on the same day. AO 1982-47 at 2. The Commission
5 further reasoned in AO 1994-29 that candidates “generally” participated in only two elections,
6 one primary and one general election, and that minor parties do not “usually” have primary
7 elections. AO 1994-29 at 2. The Commission concluded that its regulations were designed “to
8 equalize treatment, as much as possible, among major party candidates, minor party candidates,
9 and independents with respect to the availability of contribution limits.” *Id.* The Commission
10 perceived the request by a major party candidate to have a third limit to seek the nomination of a
11 minor party, through a primary occurring on the same day as the major party’s primary, as a
12 breach of this “equalization” rationale: “The purpose [of the Commission’s regulations] is not to
13 expand contribution limit opportunities for major party candidates seeking more than one party’s
14 nomination.” *Id.*

15 The Advisory Opinions that advised committees that they could not accept contributions
16 for both a major and minor party primary that occurred on the same day do not compel the result
17 that Complainant seeks. First, the cited Advisory Opinions address multiple limits for multiple
18 party primaries that took place on the same day, unlike here. Second, these Advisory Opinions,
19 which indicate that candidates may only receive two limits per election, are in tension with other
20 Advisory Opinions in which the Commission has approved a candidate’s receipt of more than
21 one primary contribution limit. See AO 2004-20; AO 1978-30; Advisory Op. 1976-58 (Peterson
22 for Congress). Third, and most fundamentally, Complainant’s argument is foreclosed by the
23 plain language of the Act and Commission regulations, which on their face place no limit on the

12044321897

1 number of "elections" eligible for separate contributions limits. Thus, because, under the Act
2 and Commission regulations, the IPO and Republican Party primaries were separate "elections,"
3 the Committee was entitled to receive a separate contribution limit for each of them and the
4 Committee did not accept excessive contributions by accepting additional primary contributions
5 for the IPO primary. Accordingly, the Commission finds that there is no reason to believe that
6 the Committee knowingly accepted excessive contributions in violation of 2 U.S.C. § 441a(f) by
7 accepting additional primary contributions for the IPO primary.

8 **B. Alleged Receipt of Other Excessive Contributions**

9 The Complaint separately asserts that the Committee accepted excessive contributions
10 because it accepted contributions that exceeded \$2,400 from four contributors (Lawson,
11 Unthank, Naser, and Tomkins) after the date of the IPO and Constitution Party primaries.
12 Compl. at 4.

13 Respondents concede that they received these four excessive contributions. Resp. at 10.
14 Respondents note, however, that: (a) Lawson's \$2,400 excessive contribution was refunded
15 before the Complaint was filed; (b) Unthank and Naser's \$2,400 excessive contributions were
16 the result of inaccurately attributing the contributions to them instead of their spouses and the
17 contributions have now been correctly attributed to their spouses; and (c) the excessive portion of
18 the Tomkins contribution, \$600, has also been refunded. *See id.*; *id.*, Exh. 4-5 (copies of the
19 Committee disclosure reports indicating a refund and reattributions); the Committee's April 2011
20 Quarterly Report (refund).

21 In view of the limited number and amount of excessive contributions at issue and the
22 Committee's corrective actions, the Commission exercises its prosecutorial discretion and
23 dismisses the allegation that the Committee violated 2 U.S.C. § 441a(f) by accepting the

12044321898

contributions identified above from these four contributors. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

C. Alleged Corporate Contributions

Corporations are prohibited from making contributions to candidates, including in-kind contributions. 2 U.S.C. § 441b Commission regulations state that corporations “are prohibited from facilitating the making of contributions to candidates,” that is, “using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election.” 11 C.F.R. § 114.2(f). The Complaint alleges that Robinson may have received prohibited corporate contributions from Althouse Press or the Oregon Institute and that his businesses may have facilitated the making of contributions to the Committee in violation of the Commission’s regulations. Compl. at 4-5.

This aspect of the Complaint stems from two campaign newsletters mailed by Robinson, for which the Committee disclosed a \$3,303.00 in-kind contribution from Robinson to his campaign, described as “Newsletter Expenses.” Compl. at 4. The Complaint alleges that Robinson “may have still received an illegal corporate contribution” because the “facts suggest that some combination of Althouse [Press] and the [Oregon] institute paid to produce the newsletter and own the mailing list to the newsletter.” *Id.* The Complaint further alleges that the “cost of printing and mailing two 4-5 page newsletters, plus the cost of renting the list from the list owner, is likely in excess of \$3,303.00” and, “if these excess costs were paid for by a corporate entity, [Robinson] received an illegal corporate contribution.” *Id.* In particular, the Complaint asserts that a fundraising letter, sent on September 5, 2010, would have involved corporate facilitation if a corporate entity owned the mailing list. *Id.* at 4-5. The Complaint further alleges that the Committee sent a fundraising e-mail to the Robinson Curriculum e-mail

12044321899

1 list on October 28, 2010, noting that the Robinson Curriculum "is not an entity registered with
2 any state" and "there is evidence that it is owned and controlled by [the Oregon Institute]." *Id.*
3 at 5. The Complaint surmised that there may be "tens of thousands" of names on the e-mail
4 distribution list because Robinson's biography states that "over 60,000 children" have been
5 taught using his curriculum and, therefore, "[a]ssuming that its list is owned by an incorporated
6 entity . . . [the Committee's] unpaid use of the e-mail list is illegal corporate facilitation." *Id.*

7 In response, the Committee asserts that the allegation that their use of the Access to
8 Energy and Robinson Curriculum subscriber lists for fundraising constituted illegal corporate
9 contributions is speculation. Resp. at 3. The Committee also points out that Althouse Press is
10 not a corporation but rather is a fictitious business name used by Robinson and is registered with
11 the Oregon Secretary of State as an assumed business name.⁶ *Id.* at 3, 11. The Oregon Institute
12 is a Section 501(c)(3) non-profit research institute that Robinson formed to conduct scientific
13 research. *Id.* at 5. Regardless, Respondents assert that the mailing lists at issue were owned by
14 the candidate himself and therefore were not contributed to the Committee by either Althouse
15 Press or the Oregon Institute. *Id.* at 3, 11. Respondents further represent that the Committee
16 rented 3,278 e-mail addresses from Robinson's personal list and paid the candidate four cents per
17 e-mail address. *Id.* at 11-12. Finally, Respondents represent that the total payment for the 3,278
18 e-mail addresses was less than \$200 and therefore was not itemized on the Committee's
19 disclosure reports. *Id.* at 11.

⁶ Althouse Press is registered in Oregon as an assumed business name; Robinson is both the registrant and its authorized representative.

12044321900

1 The Complainant's allegations of corporate contributions are speculative.⁷ And there is
2 no available evidence to support these allegations. To the contrary, Respondents answer that
3 Robinson owned the distribution lists and note that he disclosed a value for his campaign's use of
4 those lists as an in-kind contribution. Additionally, Althouse Press and Access to Energy are not
5 corporations. Accordingly, the Commission finds that there is no reason to believe that the
6 Committee knowingly accepted corporate contributions in violation of 2 U.S.C. § 441b, and no
7 reason to believe that Althouse Press, the Oregon Institute or the Robinson Curriculum made
8 corporate contributions in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f).

9 **D. Allegedly Misreported Conduit Contributions**

10 Robinson is the author of a periodic newsletter entitled "Access to Energy" in which he
11 discusses issues relating to energy policy. In March 2010, Robinson distributed an Access to
12 Energy newsletter that solicited contributions to the Committee and asked that those
13 contributions be sent to the Access to Energy Post Office ("P.O.") box. *See* Compl. at 5 and
14 Attach. A. The Complaint asserts that if any contributions were sent to Access for Energy in
15 response to the solicitation, one of Robinson's businesses should have filed conduit reports and
16 the Committee should have identified the contributions as earmarked. *Id.* The Complaint asks
17 that the Commission investigate whether Robinson received "misreported conduit contributions,"
18 and whether the conduits were corporate entities that violated the prohibition on corporations
19 acting as conduits or intermediaries. *Id.* at 5. Respondents contend that there were no earmarked
20 contributions and that the allegation is based solely on the use of a P.O. box that Access to
21 Energy shared with the Committee, which is permissible. Resp. at 12.

⁷ The Complaint frames the allegation as a series of hypothetical or unanswered questions. The allegation is essentially that, despite Robinson disclosing his own \$3,303.00 in-kind contribution to his campaign for "Newsletter Expenses," "he may have" received an illegal corporate contribution because the newsletter expenses were "likely in excess of \$3,303.00" and "If these excess costs were paid for by a corporate entity, he received an illegal contribution." Compl. at 4.

12044321901

1 The Act and Commission regulations require that intermediaries or conduits who handle
2 earmarked contributions report the original source and the intended recipient of the earmarked
3 contributions to the Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8); 11 C.F.R.
4 § 110.6(c)(1). The Commission's regulations also require candidates and committees to report
5 certain information about conduits and intermediaries and the earmarked contributions.

6 11 C.F.R. § 110.6(c)(2). Individuals expressly authorized by the candidate to engage in
7 fundraising shall not be considered to be conduits or intermediaries. 11 C.F.R. § 110.6(b)(1)(E).
8 The candidate is necessarily excluded from the definition of a conduit or intermediary.

9 The Complaint has neither identified contributions that were earmarked and handled by
10 conduits nor identified corporations that acted as conduits. Rather, the available information
11 indicates that Access to Energy and Althouse Press are not corporations and have no employees
12 other than Robinson. Resp. at 5. Access to Energy is a monthly science and engineering
13 newsletter that Robinson writes and publishes through Althouse Press and distributes to 3,500
14 subscribers. *Id.* Respondents explain that Robinson, the Committee, Access to Energy, and
15 Althouse Press share a common P.O. box and that Access to Energy and Althouse Press are not
16 businesses but rather alter egos of Robinson. *Id.* at 5, 12. Because Robinson is the only
17 employee of these entities and their alter ego, any contributions for the Committee addressed to
18 Access to Energy or Althouse Press, would have been transmitted by Robinson to the
19 Committee.

20 As noted above, the Commission's regulations exclude the candidate from the
21 definition of a conduit or intermediary. See 11 C.F.R. § 110.6(b)(1)(E). Therefore, the
22 Commission finds that there is no reason to believe that the Committee failed to disclose
23 earmarked contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c), and no

12044321902

reason to believe that Althouse Press and Access to Energy failed to disclose earmarked contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

E. Disclosure of Contributor Information and the Committee's Best Efforts

The Complaint alleges that the Committee violated the Act's disclosure requirements by failing to identify the employer and occupation of "as many as" 30.1% of the individual contributors. Compl. at 6. This figure includes contributors whose employer and occupation were disclosed by the Committee as "none." *See id.*

Below is a chart reflecting the contributions disclosed in the Committee's reports that lacked employer and occupation information, including those contributors for which the description was "none" or "best efforts." This chart omits contributions that were from Robinson and from other committees.

Report	Total \$ Amt. and % of Contributions Lacking Employer/Occupation Info	Total No. and % of Contributors Lacking Employer/Occupation Info
2010 April Quarterly	\$0 / \$15,000 (0%)	0 / 10 (0%)
2010 Pre-Primary	\$55,600 / \$128,004 (43%)	86 / 179 (48.0%)
2010 July Quarterly	\$14,582 / \$117,996 (12.4%)	19 / 181 (10.5%)
2010 October Quarterly	\$46,819 / \$376,761 (12.4%)	70 / 601 (11.6%)
2010 Post General	\$18,101 / \$149,099 (12.1%)	38 / 401 (9.5%)
2010 Year End	\$0 / \$4,800 (0%)	0 / 2 (0%)

12044321903

2011 April Quarterly	\$225 / \$6,575 (3.4%)	2 / 11 (18.2%)
2011 July Quarterly	\$3,000 / \$36,750 (8.2%)	4 / 44 (9.1%)
2011 October Quarterly	\$7,625 / \$36,525 (20.8%)	11 / 69 (15.9%)
2011 Year End	\$7,350 / \$45,875 (16.0%)	9 / 91 (9.8%)
2012 April Quarterly	\$6,300 / \$75,129 (8.3%)	12 / 185 (6.5%)

1
2 The Act requires candidate committees to identify persons who make contributions that,
3 when aggregated, exceed \$200 for the election cycle. 2 U.S.C. § 434(b)(3)(A). The Act defines
4 “identification” to include, for individuals, their name, address, occupation, and name of
5 employer. 2 U.S.C. § 431(13). If the committee does not disclose this information, the
6 committee shall nonetheless be considered in compliance with the Act if it submits evidence that
7 it used “best efforts” to “obtain, maintain, and submit this information.” 2 U.S.C. § 432(i);
8 11 C.F.R. § 104.7(a). Under Commission regulations, in order to demonstrate “best efforts,”
9 written solicitations for contributions must include a clear request for the required contributor
10 information. 11 C.F.R. § 104.7(b). In addition, the solicitation must include an accurate
11 statement of Federal law regarding the collection and reporting of individual contributor
12 identification. *Id.* In the event the contributor does not provide this information, the committee
13 treasurer must make at least one effort to obtain the information no later than 30 days after the
14 receipt of the contribution. 11 C.F.R. § 104.7(b)(2). The request may not include new material
15 on any other subject and cannot include an additional solicitation. *Id.* The request must clearly

12044321904

1 ask for the missing information and, if in writing, it must be accompanied by a pre-addressed
2 return post card or envelope. *Id.*

3 The Complaint alleges that the Committee did not use “best efforts” because the
4 Committee failed to request the employer and occupation information in multiple solicitations:
5 (1) a September 5, 2010 fundraising letter sent to the Access to Energy subscribers, attached to
6 the Complaint as Attachment G; (2) the March and May 2010 editions of Access to Energy,
7 attached to the Complaint as Attachments A and B; and (3) nine e-mails sent to the Robinson
8 Curriculum e-mail list between July 8 and October 28, 2010, attached to the Complaint as
9 Attachment H. Respondents assert they used “best efforts” to attempt to obtain and report the
10 occupation and employer information of their contributors. Resp. at 13.

11 As explained below, although the Committee has not disclosed employer and occupation
12 information for some contributors, the Committee’s Response to the Complaint indicates that it
13 made some efforts to obtain this information and, in subsequent solicitations, it has been taking
14 actions consistent with the Commission’s “best efforts” regulation, such as requesting more
15 detailed contributor information in its solicitation materials and sending a follow-up request for
16 missing information within 30 days. See Resp. at 13-14.

17 1. The September 5, 2010 Fundraising Letter

18 On September 5, 2010, Robinson sent a letter (“September 5, 2010 Letter”) to his Access
19 to Energy newsletter subscribers that solicited contributions. See Compl., Attach. G (copy of
20 September 5, 2010 Letter). According to the Complaint, this letter “did not contain an accurate
21 statement of federal law.” Compl. at 7. Respondents contend that they “earnestly sought to
22 obtain the requisite information from contributors” and cite the September 5, 2010 Letter itself,
23 which included a card that requested contributor occupation and employer information, as

12044321905

1 evidence of their best efforts. *See* Resp. at 13; Compl., Attach. G (letter and card); Resp.,
2 Exh. 7 (more legible copy of card). Additionally, Respondents submitted two blank form
3 follow-up letters that request employment information from contributors and represented that
4 these letters were sent to contributors who failed to supply occupation and employer information.
5 *See* Resp. at 14; *id.*, Exh. 8 (also including a November 8, 2010 letter from the Committee to
6 RAD explaining its use of these letters).⁸

7 Robinson's September 5, 2010 Letter included a request for the required contributor
8 information in accordance with 11 C.F.R. § 104.7(b). A card included with the letter asked
9 contributors to state their name, address, occupation, and employer, with a note stating that
10 occupation and employer information was "For donations of \$200 or more. If none, please write
11 'none.'" *See* Compl., Attach. G; Resp., Exh. 7. Although the letter does not include the
12 statement of federal law regarding the collection and reporting of contributor information,
13 *see* 11 C.F.R. § 104.7(b), both of the sample follow-up letters do. *See* Compl., Attach. G; Resp.,
14 Exh. 7-8. The Response did not include a representation as to how soon the Committee sent its
15 follow-up letters after it received a contribution without the required information, but the
16 Committee previously stated in a letter to RAD, attached as Exhibit 8 to the Response, that its
17 procedure is to send a follow-up letter to contributors within 30 days of receiving a contribution
18 without the required information. In accordance with 11 C.F.R. § 104.7(b)(2), the sample
19 follow-up letters do not include new material on any other subject, do not include an additional
20 solicitation, clearly ask for the missing information, and were assertedly accompanied by pre-
21 addressed return envelopes. Resp. at 14.

⁸ The Complaint notes that it was able to identify the employer and occupation of 11 contributors by researching those contributors on the FEC website or by using Google. Compl. at 6, n 5; *id.*, Attach. M. Respondents reject, as beyond "best efforts," the suggestion that the Committee should have obtained the missing information by "investigating" its contributors. Resp. at 14-15.

12044321906

1 Accordingly, with respect to contributions received as a result of the September 5, 2010,
2 solicitation letter, the available information suggests that Respondents satisfied some of the
3 elements of "best efforts."

4 2. The March and May 2010 Access to Energy Newsletters

5 According to the Complaint, the March and May 2010 Access to Energy newsletters
6 solicit campaign funds but do not contain "an accurate statement of federal law." Compl. at 6.
7 Respondents do not respond to this allegation.

8 The March 2010 newsletter, the first page of which is attached to the Complaint as
9 Attachment A, solicits contributions and asks that they be made by credit card on the
10 Committee's website or by mailing contribution checks to either of two addresses. The page that
11 is attached to the Complaint does not include a statement of law or a request for employment
12 information. *See* Compl., Attach. A (copy of March 2010 newsletter). However, because the
13 Complaint includes only the first page of a multi-page newsletter, it cannot be ascertained
14 whether any of the missing pages of the newsletter include the required statement and request for
15 information. The available information does not include the text of the Committee's website,
16 where contributions may have been made, as it existed when the solicitations were made.
17 However, the Committee's website *currently* includes an accurate statement of law: "Federal
18 Election Law requires political committees to report the name, mailing address, occupation and
19 name of employer for each individual whose contributions aggregate in excess of \$200 per
20 election cycle." The Committee's website also includes a request for the contributor's
21 occupation and employer. *See* <https://rfc2010.wufoo.com/forms/m7x3p9/>.

22 The May 2010 newsletter solicits funds and indicates that it was mailed with a separate
23 "specific appeal for campaign funds," *see* Compl., Attach. B at 3, but no such appeal was

12044321907

1 included in the copy of the newsletter attached to the Complaint. Accordingly, it is unclear
2 whether that portion of the solicitation requested that contributors provide employment
3 information.

4 Thus, the Commission is unable to determine whether Respondents met all of the
5 elements of "best efforts" with respect to the March and May 2010 Access to Energy
6 Newsletters.

7 3. Nine E-mails to the Access to Energy Subscribers

8 The Committee sent several e-mails to the Access to Energy subscribers, attached to the
9 Complaint at Attachment H, which included solicitations for contributions and directed
10 contributors to make their donations through the Committee's website. No copies of the
11 contribution page of the Committee's website, as it appeared at the time of the e-mailed
12 solicitations, were included with the Complaint, and Respondents did not address this allegation
13 in their Response. Accordingly, it is unclear whether contributors were asked to provide
14 employment information when making their contributions on the Committee's website. Thus,
15 the Commission is unable to determine whether Respondents met all of the elements of "best
16 efforts" with respect to the nine e-mails to Access to Energy subscribers.

17 4. Conclusion

18 In some instances, it appears that the Committee's solicitations satisfied some elements
19 of the Commission's regulation relating to "best efforts." Based on Respondents representations,
20 the Committee appears to be taking actions more consistent with that regulation and its
21 disclosure of contributor employer and occupation information has improved throughout the
22 election cycle. In MUR 6031 (Hagan), the Commission dismissed the allegation that the
23 committee failed to disclose contributor employer and occupation because the Committee

12044321908

1 demonstrated significant improvement in its efforts to obtain and disclose that information. In
2 MUR 6387 (Teri Davis Newman for Congress), the Committee lacked occupation and employer
3 information for approximately \$47,000 in contributions, nearly all of its contributions other than
4 those from the candidate. The Commission referred the matter to the Alternative Dispute
5 Resolution Office, taking into account circumstances, including that the candidate was a first-
6 time candidate. Like MUR 6387 (Teri Davis Newman for Congress), this was the Committee's
7 first campaign.

8 Further, like MUR 6031 (Hagan), the Committee's disclosures improved throughout the
9 election cycle. The Committee's amended 2010 Post-General Report, filed on March 17, 2011,
10 identified 401 contributors, 38 of which lacked employer and occupation information,
11 representing approximately 9.5% of the total number of contributors. The value of the
12 contributions donated by these 38 individuals was \$18,101, which represents 12.1% of the total.
13 Accordingly, the Committee's 2010 Post-General Report demonstrates a significant
14 improvement from the Committee's 2010 Pre-Primary Report, in which 48% of the contributors
15 identified in the report lacked employer and occupation information, and those individuals
16 contributed 43% of the contributions. Similarly, in the Committee's most recent report,
17 the 2012 April Quarterly Report, there were only twelve contributors out of 185, or 6.5%,
18 without employer and occupation information and those persons contributed \$6,300, or 8.3% of
19 the total itemized contributions identified in that report. Thus, the Committee demonstrated
20 marked improvement relative to its 2010 Pre-Primary Report.

21 Although there is some information about the Committee's best efforts that could be
22 further developed, an investigation would not be a prudent use of the Commission's resources.
23 Consequently, the Commission exercises its prosecutorial discretion and dismisses the

12044321909

1 allegations that Respondents failed to disclose employer and occupation information, *see Heckler*
2 *v. Chaney*, 470 U.S. 821 (1985), and sends a letter of caution to Respondents.

3 **F. Alleged Failure to Include Disclaimers**

4 The Complaint alleges that Respondents Robinson, the Committee, Oregon Institute,
5 Robinson Curriculum, and Althouse Press failed to include the required disclaimers on several
6 communications in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. Compl. at 7.
7 Specifically, the Complaint asserts that disclaimers were missing from nine e-mails that were
8 sent to the Robinson Curriculum e-mail list and from the March and May 2010 editions of the
9 Access to Energy newsletter, which expressly advocated Robinson's election and solicited
10 contributions. *See* Compl., Attach. A, B, H.

11 **1. Nine E-mails To the Robinson Curriculum E-mail List**

12 According to the Complaint, the Robinson campaign sent nine e-mails to the Robinson
13 Curriculum e-mail list, all but one of which were sent from the e-mail address of the candidate's
14 son, Robinson's campaign manager and the Committee's treasurer. Compl. at 7; Resp. at 5. The
15 Complaint presumed that there were more than 500 recipients of these e-mails based on a
16 statement attributed to Robinson that more than 60,000 students used his curriculum. Compl.
17 at 7. The Complaint alleges that none of the e-mails contained a disclaimer and, therefore, that
18 Robinson, Althouse Press, and the Oregon Institute violated the Act.⁹ *Id.* Respondents do not
19 contest that the e-mails are subject to the disclaimer requirements, but assert that no disclaimer
20 was required because it was clear to the public who was responsible for these communications.
21 Resp. at 16-17.

⁹ Because the Complaint alleges that Robinson's campaign sent the e-mails, the Commission treats this as an allegation that the Committee violated the Act.

1 Whenever any person makes a disbursement to finance a communication that solicits any
2 contribution through any mailing, the communication must contain a disclaimer. 2 U.S.C.
3 § 441d(a). If the communication is paid for and authorized by a candidate, an authorized
4 political committee, or its agents, then it must state that it has been paid for by such authorized
5 political committee. 2 U.S.C. § 441d(a)(1). Political committees that send more
6 than 500 substantially similar communications by e-mail must include disclaimers in the
7 communications. 11 C.F.R. § 110.11(a)(1). Disclaimers must also be presented in a clear and
8 conspicuous manner, to give the reader adequate notice of the identity of the person or
9 committee that paid for and authorized the communication. 11 C.F.R. § 110.11(c)(1). Among
10 other things, disclaimers in written materials must be contained in a printed box set apart from
11 the other contents of the communication. 11 C.F.R. § 110.11(c)(2)(ii). Disclaimers need not
12 appear on the front or cover page of the communication. 11 C.F.R. § 110.11(c)(iv).

13 In MUR 6270 (Rand Paul Committee), the Commission exercised its prosecutorial
14 discretion to dismiss an allegation that the Rand Paul Committee failed to include a disclaimer
15 on certain communications, including an e-mail signed by its political director. *See* MUR 6270
16 (Rand Paul) Factual and Legal Analysis at 10-12. The Commission concluded that there was
17 likely a *de-minimis* cost associated with the e-mail and there was sufficient information to
18 identify the Committee payor. *Id.* Additionally, the Commission dismissed, under the
19 Commission's Enforcement Priority System, similar allegations in other matters in which the
20 Committee included some identifying information. *See, e.g.,* MUR 6278 (Segers) (Commission
21 dismissed allegations that campaign flyers lacked the requisite disclaimer where the campaign
22 committee's contact information was provided).

12044321911

1 Although the e-mails, attached to the Complaint as Exhibit H, did not comply with the
2 disclaimer requirements, they contained sufficient information for the recipients to identify the e-
3 mails as authorized e-mails and to identify Robinson's campaign as the payor. Eight of the nine
4 e-mails were sent by the Committee's treasurer, Noah Robinson, from his Committee e-mail
5 address, and the ninth was sent by a person identifying himself as a "Robinson Campaign
6 Volunteer;" the e-mails rallied public support for Robinson's campaign; the e-mails directed
7 recipients to the campaign website for more information, referring to it as "our" website; and the
8 e-mails stated that "our" mailing address was a P.O. box for "Art Robinson for Congress."
9 Resp. at 16-17.¹⁰ The address for recipients to contact to unsubscribe from the e-mails was the
10 Committee's e-mail address.

11 Therefore, the Commission exercises its prosecutorial discretion and dismisses the
12 allegations that the Committee, Althouse Press, and the Oregon Institute violated 2 U.S.C.
13 § 441d and 11 C.F.R. § 110.11 with respect to the e-mails, *see Heckler v. Chaney*, 470 U.S. 821
14 (1985), and sends a letter of caution to Respondents

15 2. March and May 2010 Access to Energy Newsletters

16 The Complaint also asserts that the March and May 2010 editions of the Access to
17 Energy newsletter expressly advocated Robinson's election and solicited contributions, but
18 lacked disclaimers. *See Compl.* at 7. Respondents contend that the March 2010 newsletter
19 contained sufficient identifying information to prevent the public from being misled as to who
20 authorized and paid for the solicitation. *Resp.* at 17. The newsletter indicated that: (a) Robinson
21 was the author, publisher, and editor; (b) Robinson identified himself as running for Congress;

¹⁰ Respondents contend that an unspecified technical error caused the omission of the disclaimer on its e-mails and that "the Commission does not take action against respondents who have failed to satisfy disclaimer requirement [*sic*] because a technical error was made in disseminating the communication or the disclaimer was missing in whole or in part." *Resp.* at 16; *id.*, n.4. Without further information about the purported technical error, it is difficult to evaluate this assertion.

(c) Robinson promoted his campaign in the newsletter; (d) Robinson requested that any fundraising checks be addressed to "Art Robinson for Congress"; and (e) the communication in question was a newsletter sent to subscribers who were familiar with the nature of the newsletter. *Id.*

Respondents also contend that the May 2010 newsletter "conspicuously stated that Dr. Robinson paid the entire cost of the issues that solicited contributions" to the Committee on the third page under the heading "Federal Election Laws." Resp. at 15. Indeed, the third page of the newsletter includes a section about federal election laws and the phrase "Paid for by Art Robinson by Congress" in a box in the middle of the first column of text. See Compl., Attach. B at 3. The accompanying text of the newsletter indicates that the boxed disclaimer is an example of a disclaimer that must appear on campaign materials, but that "We have been legally advised that this disclaimer need not appear on this newsletter, since it appears on the specific appeal for help that is enclosed with it." *Id.* Neither the Complaint nor the Response includes the "specific appeal for help" that, according to the text of the May 2010 newsletter, contained a disclaimer. Even though the available information does not include a copy of the "specific appeal for help," the newsletter states that Arthur B. Robinson paid for the cost of the newsletter and reported the costs as an in-kind contribution to the Committee. *Id.*

In short, although the March 2010 newsletter did not contain the disclaimer required by the Act and the Commission's regulations, there was sufficient information in the newsletters to identify the Committee payor, and is similar to the MURs, identified above, in which the Commission dismissed the allegations. Therefore, the Commission exercises its prosecutorial discretion and dismisses the allegations that the Committee, Althouse Press, and the Oregon Institute violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 with respect to the March and May

12044321913

- 1 2010 Access to Energy newsletters, *see Heckler v. Chaney*, 470 U.S. 821 (1985), and cautions
- 2 Respondents regarding the March 2010 newsletter.

12044321914